

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Faint

Mailed: December 29, 2015

Opposition/Cancellation No. 92060328

L.A. Gem and Jewelry Design, Inc.

v.

Souki Manufacturing Inc.

By the Trademark Trial and Appeal Board:

Petitioner seeks to cancel Respondent's registration for the mark

Love is Forever

in stylized form.¹ As grounds for cancellation, Petitioner alleges abandonment.

By its order of June 12, 2015, the Board granted Petitioner's motion to strike the answer, instructed Respondent in the format for an answer, and allowed Respondent 30 days to file an amended answer in conformance with Fed. R. Civ. P. 8(b) and 10(a) and (b). Respondent filed an amended answer on July 13, 2015, and an "amendment" to that answer on July 21, 2015.

This case now comes up on Petitioner's motion to strike the amended answers and for default judgment, filed July 31, 2015. The motion is contested.

The Board notes that in addition to its first amended answer, filed July 13, 2015, its "amendment" filed July 21, 2015, and its response in opposition to

¹ Registration No. 3811074, registered June 29, 2010 pursuant to Trademark Act § 66(a).

Petitioner's motion to strike and for default judgment, Respondent has filed 14 other communications with the Board, apparently seeking to further amend the pleadings, "report" sending documents to Petitioner or the Board, or to file proof of service of documents already filed. Although Respondent is appearing pro se, Respondent must still meet all deadlines and comply with all Board rules, policies and procedures. Respondent has been given detailed instruction about how to access information for conducting Board proceedings in both the Board's institution order of November 6, 2014 and the Board's order of June 12, 2015.

This means that Respondent must not make multiple filings regarding the same issue and may not exceed the page limits for filings before the Board. *See* Trademark Rules 2.126 and 2.127. Briefs on motions may not exceed 25 pages in length and a reply brief may not exceed 10 pages in length. Trademark Rule 2.127(a). Proof of service must accompany any document required by Trademark Rule 2.119(a) to be served upon every other party to the proceeding before the Board will consider the filing, but is not counted towards the page limit.

Respondent's brief in opposition to the motion to strike and for default is 38 pages in length. As such, the brief will be given no consideration. Trademark Rule 2.127(a). Further, Respondent's many amendments and filings are confusing and do not present a clear view of the case. An amended pleading usually supersedes the pleading it modifies, and must be direct, clear and explicit. *See Jet Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 55 USPQ2d 1854, 1858 (Fed. Cir. 2000); *see also* 6

Wright & Miller, FED. PRAC. & PROC. CIV. 3d § 1476 (Westlaw 2015). Respondent must cease from its piecemeal, seriatim filings.

It is clear from Respondent's answer and amended answers that Respondent does not concede the case, and the Board will exercise its discretion to consider the motion on the merits. The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. *See* TBMP §312.02 (2015).

An answer should state a respondent's defenses in short and plain terms and admit or deny, or state the defendant is without sufficient information to admit or deny the averments upon which the plaintiff relies. Trademark Rule 2.114(b)(1). Although Respondent's responses are by no means a model of clarity, Respondent clearly indicates it is without sufficient information, or denies, the salient allegations of the complaint and does not concede the case.² In keeping with the Board's policy of deciding cases on the merits where possible, the Board construes Respondent's responses as a general denial of the allegations in the Petition for cancellation.

In view thereof, any default is hereby discharged. Petitioner's motions to strike and for default are **denied**.

² However, Respondent also stated it was without "sufficient knowledge/information to form a belief" as to the truth of allegations as to the date it filed its own application to register the mark and its own name and address *Compare* petition to cancel 1 TTABVUE 4 ¶¶ 1 and 2 *with* second amended answer 24 TTABVUE 22. It is hard to believe that Respondent does not know when it filed its own trademark application or know its own name and address. Respondent should use care in all of its future filings with the Board and be truthful in its filings.

In order to help keep this case on track, the parties are hereby ordered to hold a discovery conference with Board participation on or before January 23, 2016. Counsel for Petitioner, and Respondent as pro se, must each contact the Interlocutory Attorney at 571-272-9274 or send an email to Catherine.Faint@uspto.gov to schedule the discovery conference with Board participation.

Legal Representation Strongly Recommended

Respondent is appearing pro se as the “Representative Director” of the corporation. While Patent and Trademark Rule 11.14 permits any juristic person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to procedure.

Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006). If Respondent decides to continue without counsel, he is urged to frequently consult the Trademark Trial and Appeal Board Manual of Procedure (TBMP) (2015) and the Trademark rules of practice, which are available from the USPTO website at www.uspto.gov.

Mailing Information

A party located outside the United States generally cannot serve an adverse party in the manner specified in Trademark Rules 2.119(b)(1)-(4) (personal service, or United States Priority, Express or Postal Service). Moreover, a foreign party may not substitute its national postal service, or omit reference to the nation of the postal service employed, as a means of using the manner of service specified in Trademark Rule 2.119(b)(4) as the Rule requires transmission by the United States Postal Service.

As a practical matter, parties located outside the United States must meet the service requirement through manners of service provided in Trademark Rules 2.119(b)(5) and (6). Parties located outside the United States are strongly encouraged to list an email address with the Board for the duration of the inter partes proceeding, and to seek written agreement from the adverse party to service by electronic transmission.

Filings in a Foreign Language

Board proceedings are conducted in English. If Respondent, or any party, intends to rely upon any documents that are in a language other than English, the party must file the documents together with a certified translation. If a translation is not submitted, the documents may not be considered by the Board. *See, e.g., Swiss Watch Int'l Inc. v. Federation of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1734 n.8 (TTAB 2012) (noting that printed publications submitted in foreign language without translations are of limited probative value); *Johnson & Johnson v. Obschestvo s ogranitchennoy; otvetstvennostiu "WDS,"* 95 USPQ2d 1567, 1570 n.3 (TTAB 2010)

(noting that if party intends to rely at trial on business records in foreign language, it must provide translation);

Schedule

Proceedings are resumed. Dates are reset as set out below.

In order to help keep this case on track, the parties are hereby ordered to hold a discovery conference with Board participation on or before January 23, 2016. Counsel for Petitioner, and Respondent as pro se, must each contact the Interlocutory Attorney no later than January 9, 2015 at 571-272-9274 or via email to Catherine.Faint@uspto.gov to schedule the discovery conference with Board participation.

Deadline for Discovery Conference	1/23/2016
Discovery Opens	1/23/2016
Initial Disclosures Due	2/22/2016
Expert Disclosures Due	6/21/2016
Discovery Closes	7/21/2016
Plaintiff's Pretrial Disclosures Due	9/4/2016
Plaintiff's 30-day Trial Period Ends	10/19/2016
Defendant's Pretrial Disclosures Due	11/3/2016
Defendant's 30-day Trial Period Ends	12/18/2016
Plaintiff's Rebuttal Disclosures Due	1/2/2017
Plaintiff's 15-day Rebuttal Period Ends	2/1/2017

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
